

AMENDED IN ASSEMBLY AUGUST 12, 2008

AMENDED IN SENATE APRIL 22, 2008

AMENDED IN SENATE APRIL 8, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1604

Introduced by Senator Machado

February 22, 2008

~~An act to amend Sections 22104, 22112, 50124, and 50306 of, and to add Sections 22169.1, 22169.2, 50318.1, and 50318.2 to, the Financial Code, relating to lending—An act to amend Sections 17312, 17331.2, 17406, and 17409 of the Financial Code, relating to escrow agents.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1604, as amended, Machado. ~~Finance lenders and residential mortgage lenders—Escrow Agents' Fidelity Corporation.~~

Existing law, the Escrow Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in business as escrow agents, unless specifically exempted. Existing law requires persons licensed as escrow agents to be members of the Escrow Agents' Fidelity Corporation (Fidelity Corporation), which is established as a nonprofit corporation to indemnify its members against loss, and which is funded by fees and assessments on its members. Existing law limits the coverage provide by Fidelity Corporation to certain types of transactions and provides that indemnity coverage for other transactions be provided by escrow agents through bonding requirements.

This bill would require any private insurance coverage of a member, that also covers a loss that would be covered by Fidelity Corporation, to be applied as primary coverage.

Existing law requires employees of escrow agents and various other persons to obtain a certificate from Fidelity Corporation as a condition of employment or compensation. Existing law requires Fidelity Corporation to deny an application for a certificate or to revoke the certificate under certain circumstances.

This bill would allow a person whose certificate application has been denied or whose certificate has been revoked to file a reapplication for a certificate after a specified time, provided that the person has satisfied all obligations to Fidelity Corporation under any prior arbitration award or judgment.

Existing law requires a licensee under the Escrow Law to submit an annual audit report to the commissioner as well as various other financial reports that the commissioner may require. Existing law requires an independent accountant who prepares certain reports in that regard to provide copies directly to the commissioner.

This bill would require a licensee who engages an independent accountant or 3rd-party contractor to provide accounting, auditing, or trust account reconciliation services to require that accountant or 3-party contractor to immediately notify the commissioner and Fidelity Corporation upon the occurrence of various events or discoveries.

Existing law specifies the types of financial institution accounts that are allowable depositories for moneys deposited in escrow with a licensee.

This bill would require that an agreement by a licensee with a financial institution to establish one of these accounts be accompanied by a letter from the licensee authorizing and requesting the financial institution to immediately notify the commissioner and Fidelity Corporation of account closure or the occurrence of an overdraft balance under specified circumstances.

~~(1) Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers, as defined, by the Commissioner of Corporations and makes a willful violation of that law a crime. Existing law requires an applicant for a license to provide specified information, including, but not limited to, financial statements that indicate a net worth of at least \$25,000. Existing law requires a licensee to maintain that minimum net worth at all times.~~

~~This bill would require that applicants for a license to engage in the business of residential mortgage lending, as specified, show a minimum tangible net worth of \$50,000, for brokers, and \$250,000, for finance lenders. The bill would require that all other applicants for a license~~

~~show a minimum tangible net worth of \$25,000, for brokers, and \$100,000, for finance lenders. The bill would require that licensees update that information if a change occurs, as specified, and would require that licensees maintain the applicable net worth at all times.~~

~~Existing law requires licensees to maintain a surety bond in the amount of \$25,000, as specified.~~

~~This bill would require that finance lenders and brokers engaged in the business of residential mortgage loans, as specified, maintain a surety bond in the amount of \$100,000. The bill would require that the bond be payable when a licensee fails to comply with the California Finance Lenders Law.~~

~~Because a willful violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program.~~

~~(2) Existing law, the California Finance Lenders Law, provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. Existing law, the California Residential Mortgage Lending Act, provides for the regulation and licensure of residential mortgage lenders and servicers by the Commissioner of Corporations. A willful violation of any provision of those acts is a crime.~~

~~This bill would require any person seeking employment with a finance lender or broker, or with a residential mortgage lender or residential mortgage loan servicer, except as specified, to complete a specified employment application, which would consist of, among other things, questions related to that person's disciplinary history and criminal background. Upon receipt of an application in which a new employee has answered affirmatively to certain application questions, the bill would require the licensee to submit a copy of that application to the Commissioner of Corporations. Because a willful violation of these provisions would constitute a crime, the bill would impose a state-mandated local program.~~

~~(3) Existing law, the California Residential Mortgage Lending Act, requires a license application to be accompanied by an exhibit containing statements that the applicant, prior to opening a branch office in this state or changing business locations, will notify the Commissioner of Corporations in writing, by certified mail, return receipt requested, of that opening or change in location.~~

~~This bill would require that exhibit to also contain a statement that the applicant will provide that notification when it closes a business~~

location. Because a willful violation of this provision would constitute a crime, the bill would impose a state-mandated local program.

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17312 of the Financial Code is amended
2 to read:

3 17312. (a) Each person licensed pursuant to this division who
4 is engaged in the business of receiving escrows specified in
5 subdivision (c) and whose escrow business location is located
6 within the State of California shall participate as a member in
7 Fidelity Corporation in accordance with this chapter and rules
8 established by the board of directors of Fidelity Corporation.
9 Fidelity Corporation shall not deny membership to any escrow
10 agent holding a valid unrevoked license under the Escrow Law
11 who is required to be a member under this subdivision.

12 (b) Upon filing a new application for licensure as required by
13 Section 17201, persons required to be a member of Fidelity
14 Corporation shall file a copy thereof concurrently with Fidelity
15 Corporation. If an application for licensure submitted to Fidelity
16 Corporation contains personal or confidential information, Fidelity
17 Corporation and its board shall maintain this information in
18 confidence to protect the privacy of the information. The copy of
19 the application shall include the three thousand dollar (\$3,000) fee
20 specified in subdivision (a) of Section 17320 and all required
21 Fidelity Corporation Certificates set forth in Sections 17331 and
22 17331.1. Fidelity Corporation shall promptly furnish to the
23 commissioner a compliance letter confirming that the applicant
24 has satisfied the requirements to be a member of Fidelity
25 Corporation.

26 (c) The required membership in Fidelity Corporation shall be
27 limited to those licensees whose escrow business location is located
28 within the State of California and who engage, in whole or in part,

1 in the business of receiving escrows for deposit or delivery in the
2 following types of transactions:

3 (1) Real property escrows, including, but not limited to, the
4 sale, encumbrance, lease, exchange, or transfer of title, and loans
5 or other obligations to be secured by a lien upon real property.

6 (2) Bulk sale escrows, including, but not limited to, the sale or
7 transfer of title to a business entity and the transfer of liquor
8 licenses or other types of business licenses or permits.

9 (3) Fund or joint control escrows, including, but not limited to,
10 transactions specified in Section 17005.1, and contracts specified
11 in Section 10263 of the Public Contract Code.

12 (4) The sale, transfer of title, or refinance escrows for
13 manufactured homes or mobilehomes.

14 (5) Reservation deposits required under Article 2 (commencing
15 with Section 11010) of Chapter 1 of Part 2 of Division 4 of the
16 Business and Professions Code or by regulation of the Department
17 of Real Estate to be held in an escrow account.

18 (6) Escrows for sale, transfer, modification, assignment, or
19 hypothecation of promissory notes secured by deeds of trust.

20 (d) Coverage required to be provided by Fidelity Corporation
21 under this chapter shall be provided to members only for loss of
22 trust obligations with respect to those types of transactions
23 specified in subdivision (c). *If a loss covered by Fidelity*
24 *Corporation is also covered by a member's general liability,*
25 *dishonesty, or indemnity policy, or other private insurance policy,*
26 *then the member's private policy shall first be applied as the*
27 *primary indemnity to cover the loss. However, the failure of the*
28 *member's private primary policy to indemnify the member's loss*
29 *within the time specified for Fidelity Corporation indemnity in*
30 *subdivision (a) of Section 17314 shall not limit the indemnity*
31 *obligations of Fidelity Corporation as defined in this chapter.*
32 Indemnity coverage for those types of transactions not specified
33 in subdivision (c) shall be provided by escrow agents in accordance
34 with Section 17203.1.

35 SEC. 2. Section 17331.2 of the Financial Code is amended to
36 read:

37 17331.2. (a) Fidelity Corporation shall deny the application
38 for a certificate or revoke the certificate of any person, upon any
39 of the following grounds:

1 (1) The application contains a material misrepresentation of fact
2 or fails to disclose a material fact so as to render the application
3 false or misleading, or if any fact or condition exists which, if it
4 had existed at the time of the original application for a certificate,
5 reasonably would have warranted Fidelity Corporation to refuse
6 originally to issue that certificate.

7 (2) That the person has been convicted of a crime or offense,
8 whether a felony, an offense punishable as a felony, or a
9 misdemeanor, that involved dishonesty, fraud, deceit,
10 embezzlement, fraudulent conversion, misappropriation of
11 property, or any other crime reasonably related to the qualifications,
12 functions, or duties of a person engaged in business in accordance
13 with this division. A conviction within the meaning of this section
14 is a plea or verdict of guilty or a conviction following a plea of
15 nolo contendere. A conviction also includes an order granting
16 probation and suspending the imposition of sentence,
17 notwithstanding a subsequent order pursuant to Section 1203.4 or
18 1203.4a of the Penal Code permitting the person to withdraw his
19 or her plea of guilty and to enter a plea of not guilty, or setting
20 aside the verdict of guilty, or dismissing the accusation,
21 information, or indictment. If, however, the conviction is more
22 than 10 years old, or the conviction has been expunged, or the
23 person has obtained a certificate of rehabilitation or relief under
24 Section 1203.4 or 1203.4a of the Penal Code, or if the conviction
25 was an infraction, then the person may have a Fidelity Corporation
26 certificate upon showing by clear and convincing proof to a
27 reasonable certainty that the conviction is no longer reasonably
28 related to the qualifications, functions, or duties of a person
29 engaged in business in accordance with this division or that
30 person's employment with a member.

31 (3) That the person has been held liable in a civil action by final
32 judgment of any court if the judgment involved dishonesty, fraud,
33 deceit, embezzlement, fraudulent conversion, or misappropriation
34 of property or the person has been ordered to make restitution to
35 a victim in any criminal case involving a crime or offense set forth
36 in paragraph (2). The person may have a Fidelity Corporation
37 certificate upon showing by clear and convincing proof to a
38 reasonable certainty that the judgment or restitution order is no
39 longer reasonably related to the qualifications, functions, or duties

1 of a person engaged in business in accordance with this division
2 or that person's employment with a member.

3 (4) That the person has (A) committed or caused to be
4 committed an act which caused any member to suffer a loss; (B)
5 committed or caused to be committed or colluded with any other
6 person committing any act which caused a loss, for which Fidelity
7 Corporation or the insurer on any insurance policy or fidelity bond
8 purchased by Fidelity Corporation, or both, to become liable to
9 indemnify any member; or (C) committed or caused to be
10 committed an act of dishonesty, fraud, deceit, embezzlement,
11 fraudulent conversion, or misappropriation of property, to the
12 material damage of a member or for which the member has been
13 held liable to any third party, by final judgment.

14 (5) That the person has been barred from employment by final
15 order of the commissioner pursuant to Section 17423.

16 (6) That the person has been deemed not qualified to serve in
17 any capacity as a director or officer or in any other position
18 involving management duties with a financial institution, pursuant
19 to Division 1.8 (commencing with Section 4990).

20 (7) That the person has been denied coverage or reinstatement
21 by any insurer under any fidelity bond or crime policy, unless a
22 decision of reinstatement of coverage has been made after that
23 denial. A person who obtained a decision of reinstatement of
24 coverage prior to the effective date of this section may have a
25 Fidelity Corporation certificate notwithstanding paragraphs (2)
26 and ~~(3) of this subdivision~~, (3), unless any other ground for denial
27 or revocation applies to that person.

28 (b) Fidelity Corporation shall suspend the certificate of any
29 person upon either of the following grounds:

30 (1) That the person has been censured or suspended from any
31 position of employment by final order of the commissioner. The
32 certificate suspension shall be for a term concurrent with the final
33 order of the commissioner.

34 (2) That the person has been barred from any position of
35 employment or management or control of any escrow agent, for
36 a term of less than permanent, by final order of the commissioner.
37 The certificate suspension shall be for a term concurrent with the
38 final order of the commissioner.

39 (c) Fidelity Corporation may suspend the certificate of any
40 person under either of the following grounds:

1 (1) That there is an action commenced by the commissioner to
2 either suspend or bar that person, under Section 17423.

3 (2) That any member with whom the person was employed has
4 given a proof of loss or a notice of an occurrence which may give
5 rise to a claim for a loss of trust obligations either of which
6 identifies the person as the person responsible for the loss or as a
7 person acting in collusion with the person causing the loss.

8 (d) Upon denial of an application for, or upon suspension or
9 revocation of the certificate of any person, Fidelity Corporation
10 shall provide written notice to the member with whom that person
11 is employed of the decision, pending any appeal therefrom which
12 might be made. Thereafter, the member shall not allow that person
13 to have access to money or negotiable instruments or securities
14 belonging to or in the possession of the escrow agent, or to draw
15 checks upon the escrow agent or the trust accounts of the escrow
16 agent, but that person may otherwise continue in the performance
17 and discharge of other duties of an employee. Fidelity Corporation
18 shall notify the person in writing of the decision to deny, suspend,
19 or revoke the certificate and of the person's right of appeal, together
20 with the notice of appeal. The grounds and basis for the decision
21 shall be stated in the notice thereof. All notices may be served
22 either personally or by mail, properly addressed to the address of
23 record for the member and the person.

24 (e) Any person whose application for a certificate has been
25 denied, or whose certificate has been suspended or revoked, may
26 appeal the decision, as provided in Section 17331.3. While that
27 appeal is pending, the person may not have access to money or
28 negotiable instruments or securities belonging to or in the
29 possession of the escrow agent, or to draw checks upon the escrow
30 agent or the trust accounts of the escrow agent, but that person
31 may otherwise continue in the performance and discharge of other
32 duties of an employee pending final decision of that person's
33 appeal. Failure to remove the person whose application has been
34 denied, or whose certificate has been suspended or revoked, as a
35 signer on the trust accounts may be subject to action by the
36 commissioner as provided for in this division and shall be subject
37 to penalties as set forth in Section 17331.1.

38 (f) Upon expiration of the time for an appeal, or upon conclusion
39 of the appeal, the decision to deny an application for or to suspend
40 or revoke the certificate of any person shall become final. Fidelity

Corporation shall give written notice to the member and to the person of the final decision within 10 days. Thereafter, Fidelity Corporation shall disclose in writing to all members the identity of persons whose application has been denied or whose certificate has been revoked. *The person whose certificate has been denied or revoked may file a certificate reapplication after the period of time specified in Section 11522 of the Government Code, dating from the Fidelity Corporation final decision, provided that the person has satisfied all obligations to Fidelity Corporation under any prior arbitration award or judgment.*

SEC. 3. Section 17406 of the Financial Code is amended to read:

17406. (a) Each licensee shall submit to the commissioner, at the licensee's own expense, an audit report containing audited financial statements covering the calendar year or, if the licensee has an established fiscal year, then for that fiscal year, within 105 days after the close of the calendar or fiscal year, as applicable. At that time, each licensee shall also file additional relevant information as the commissioner may require.

(b) Within 30 days after receipt of a request from the commissioner, a licensee or other person subject to this division shall submit to the commissioner, at the person's own expense, an audit report containing audited financial statements covering the 12 calendar months next preceding the month of receipt of the request, or for another period as the commissioner may require. Unless the public interest shall otherwise require, the commissioner shall exempt a licensee from the provisions of subdivision (a) in whole or in part if the licensee has complied with a request pursuant to this subdivision as of a date within the calendar or fiscal year for which the exemption is granted.

(c) A licensee whose license has been revoked shall submit to the commissioner, at its own expense, on or before 105 days after the effective date of the revocation, a closing audit report as of that effective date, or for another period as the commissioner may specify. The report shall include the information specified by the commissioner. A licensee who has complied with this subdivision is exempt from subdivision (a) of this section.

(d) The reports and financial statements referred to in subdivisions (a) and (b) shall include at least a balance sheet and a statement of income for the year ended on the balance sheet date

1 together with other relevant information as the commissioner may
2 require. The reports and financial statements referred to in
3 subdivisions (a), (b), and (c) shall be prepared in accordance with
4 generally accepted accounting principles, and shall be accompanied
5 by a report, certificate, or opinion of, an independent certified
6 public accountant or independent public accountant. The audits
7 shall be conducted in accordance with generally accepted auditing
8 standards and the rules of the commissioner.

9 (e) A licensee shall make other special reports to the
10 commissioner as the commissioner may from time to time require.

11 (f) For good cause and upon written request, the commissioner
12 may extend the time for compliance with subdivisions (a) and (b).

13 (g) A licensee shall, when requested by the commissioner,
14 submit its unaudited financial statements, prepared in accordance
15 with generally accepted accounting principles and consisting of
16 at least a balance sheet and statement of income and expense as
17 of the date and for the period specified by the commissioner. The
18 commissioner may require the submission of these reports on a
19 monthly or other periodic basis.

20 (h) If the report, certificate, or opinion of the independent
21 accountant referred to in subdivision (d) is in any way qualified,
22 the commissioner may require the licensee to take action as he or
23 she deems appropriate to permit an independent accountant to
24 remove the qualifications from the report, certificate, or opinion.

25 (i) The commissioner may reject any financial statement, report,
26 certificate, or opinion by notifying the licensee or other person
27 required to make the filing of its rejection and the cause of the
28 rejection. Within 30 days after the receipt of the notice, the licensee
29 or other person shall correct the deficiency and the failure so to
30 do shall be deemed a violation of this division. The commissioner
31 shall retain a copy of all rejected filings.

32 (j) The commissioner may make rules specifying the form and
33 content of the reports and financial statements referred to in this
34 section, and may require that those reports and financial statements
35 be verified by the licensee in the manner as he or she may
36 prescribe.

37 (k) Upon completion of the reports and financial statements
38 referred to in subdivisions (a), (b), and (c), the independent
39 accountant shall submit to the commissioner complete copies of

1 the reports and financial statements at the same time that copies
2 of the reports and financial statements are submitted to the licensee.

3 *(l) A licensee who engages an independent accountant or other*
4 *third-party contractor to reconcile trust account records shall*
5 *require the independent accountant or third-party contractor, at*
6 *a minimum, to immediately notify the commissioner and Fidelity*
7 *Corporation in the event of any of the following:*

8 *(1) The termination or voluntary withdrawal of the independent*
9 *accountant or third-party contractor from the engagement.*

10 *(2) The discovery by the independent accountant or third-party*
11 *contractor of an unreconcilable trust account debit balance. A*
12 *debit balance exists if an escrow agent withdraws, pays out, or*
13 *transfers money from an escrow account in excess of the amount*
14 *to the credit of that account at the time of the withdrawal, payment,*
15 *or transfer.*

16 *(3) The discovery by the independent accountant or third-party*
17 *contractor that trust account reconciliations have not been*
18 *performed for two months after the end of any calendar month.*

19 *(4) The discovery by the independent accountant or third-party*
20 *contractor of exception items in trust account exception reports,*
21 *that remain uncorrected for two months after the end of any*
22 *calendar month.*

23 *Notification pursuant to this subdivision may be accomplished*
24 *by transmitting to the commissioner and Fidelity Corporation*
25 *copies of trust account reconciliation exception reports.*

26 *(m) Nothing in this section shall be deemed to require a licensee*
27 *to contract with a third party to review trust account records.*

28 *SEC. 4. Section 17409 of the Financial Code is amended to*
29 *read:*

30 17409. (a) All moneys deposited in escrow to be delivered
31 upon the close of the escrow or upon any other ~~contingency~~;
32 *contingency* shall be deposited and maintained in a
33 noninterest-bearing demand or checking account in a bank, a state
34 or federal savings bank, or a state or federal savings association
35 or in a noninterest-bearing account subject to immediate withdrawal
36 in an industrial loan company insured by the Federal Deposit
37 Insurance Corporation and approved to receive those moneys by
38 the commissioner. Thereafter, these moneys may be deposited in
39 an interest-bearing account in a bank, a state or federal savings
40 bank, a state or federal savings association, an industrial loan

1 company approved to receive those moneys by the commissioner,
2 or a state or federal credit union, if the depositor is qualified for
3 membership under the bylaws of that credit union, and the moneys
4 are maintained separate, distinct, and apart from funds belonging
5 to the escrow agent. Those funds, when deposited, are to be
6 designated as “trust funds,” “escrow accounts,” or under some
7 other appropriate name indicating that the funds are not the funds
8 of the escrow agent.

9 Upon request of the commissioner, a licensee shall furnish to
10 the commissioner an authorization for examination of financial
11 records of any trust funds or escrow accounts, maintained in a
12 financial institution, in accordance with the procedures set forth
13 in Section 7473 of the Government Code.

14 (b) A licensee engaged in the business of receiving escrows for
15 deposit or delivery of the types specified in subdivision (c) of
16 Section 17312 and of the types not specified therein shall maintain
17 separate escrow trust accounts, for both types of escrow business
18 in the same manner as provided in subdivision (a) of this section
19 and Sections 17409.1, 17410, 17411, and 17411.1.

20 (c) *Any agreement with a financial institution to establish an*
21 *account pursuant to this section shall be accompanied by a letter*
22 *from the licensee authorizing and requesting that the financial*
23 *institution immediately notify the commissioner and Fidelity*
24 *Corporation when it becomes aware of either of the following:*

25 (1) *The closure of any account subject to this section, other than*
26 *to transfer the funds to another designated trust account at the*
27 *same financial institution in the name of the escrow agent or the*
28 *remittance of the funds to the Controller’s office for escheat*
29 *purposes.*

30 (2) *The occurrence of any overdraft balance in an account*
31 *subject to this section.*

32 ~~SECTION 1. Section 22104 of the Financial Code is amended~~
33 ~~to read:~~

34 ~~22104. (a) An applicant shall file with the application financial~~
35 ~~statements prepared in accordance with generally accepted~~
36 ~~accounting principles and acceptable to the commissioner that~~
37 ~~indicate a minimum tangible net worth of one of the following~~
38 ~~amounts, as applicable:~~

39 ~~(1) Twenty-five thousand dollars (\$25,000) for a license to act~~
40 ~~as a broker, unless paragraph (2) applies.~~

1 ~~(2) Fifty thousand dollars (\$50,000) for a license to act as a~~
2 ~~broker engaged in the business of negotiating or performing acts~~
3 ~~in connection with residential mortgage loans.~~

4 ~~(3) One hundred thousand dollars (\$100,000) for a license to~~
5 ~~act as a finance lender, unless paragraph (4) applies.~~

6 ~~(4) Two hundred fifty thousand dollars (\$250,000) for a license~~
7 ~~to act as a finance lender engaged in the business of making~~
8 ~~residential mortgage loans.~~

9 ~~(b) A broker that commences or ceases engaging in the business~~
10 ~~of negotiating or performing acts in connection with residential~~
11 ~~mortgage loans, or a finance lender that commences or ceases~~
12 ~~engaging in the business of making residential mortgage loans,~~
13 ~~shall update the financial statements filed pursuant to subdivision~~
14 ~~(a) within the time period specified by, and in a format acceptable~~
15 ~~to, the commissioner.~~

16 ~~(c) A licensee shall maintain the minimum amount of tangible~~
17 ~~net worth applicable under this section at all times.~~

18 ~~(d) For purposes of this section, tangible net worth shall be~~
19 ~~computed in accordance with generally accepted accounting~~
20 ~~principles.~~

21 ~~(e) For purposes of this section, “residential mortgage loan”~~
22 ~~means a loan secured by real property located in this state and~~
23 ~~improved by a one-to-four family dwelling.~~

24 ~~SEC. 2. Section 22112 of the Financial Code is amended to~~
25 ~~read:~~

26 ~~22112. — (a) A licensee shall maintain a surety bond in~~
27 ~~accordance with this section in the amount of twenty-five thousand~~
28 ~~dollars (\$25,000), except as provided in subdivision (b). The bond~~
29 ~~shall be payable to the commissioner and issued by an insurer~~
30 ~~authorized to do business in this state. An original surety bond,~~
31 ~~including any and all riders and endorsements executed subsequent~~
32 ~~to the effective date of the bond, shall be filed with the~~
33 ~~commissioner within 10 days of execution. For licensees with~~
34 ~~multiple licensed locations, only one surety bond is required. The~~
35 ~~bond shall be used for the recovery of expenses, fines, and fees~~
36 ~~levied by the commissioner in accordance with this division or for~~
37 ~~losses or damages incurred by borrowers or consumers as the result~~
38 ~~of a licensee’s noncompliance with the requirements of this~~
39 ~~division. The bond shall be payable when a licensee fails to comply~~
40 ~~with this division.~~

~~(b) A finance lender engaged in the business of making residential mortgage loans or a broker engaged in the business of negotiating or performing acts in connection with residential mortgage loans shall maintain the bond described in subdivision (a) in the amount of one hundred thousand dollars (\$100,000).~~

~~(c) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.~~

~~(d) For purposes of this section, "residential mortgage loan" means a loan secured by real property located in this state and improved by a one-to-four family dwelling.~~

~~SEC. 3. Section 22169.1 is added to the Financial Code, to read:~~

~~22169.1. (a) Any person seeking employment with a finance lender or broker shall complete an employment application on or before the first day of employment that includes, at a minimum, the following information:~~

STATEMENT OF IDENTITY
AND EMPLOYMENT APPLICATION
(Print or Type)

1. Exact Full Name:

First Name — Middle Name — Last Name
(Do not use initials or nicknames)

2. Title of position to be filled in connection with the preparation of this employment application:

3. Have you ever been disciplined for, or found guilty of, a violation of the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), or a rule or order of the Commissioner of Corporations pursuant to the California Finance Lenders Law?

() Yes — () No

If the answer is “Yes,” complete the following:

Date of Violation: _____

Nature of Violation: _____

4. Have you ever been convicted of, or pleaded nolo contendere to, any crime involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of this position?

NOTE: A conviction is a plea or verdict of guilty or a conviction following a plea of nolo contendere. A conviction also includes an order granting probation and suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 or 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty, or dismissing the accusation, information, or indictment.

() Yes — () No

If the answer is “Yes,” complete the following:

Date of Case: _____

Location of Court (City, County, State): _____

Nature of Case: _____

5. Have you ever been held liable in any civil court action for any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of this position?

() Yes — () No

If the answer is “Yes,” complete the following:

Date of Suit: _____

Location of Court (City, County, State): _____

Nature of Suit: _____

6. Have you ever been held liable in any administrative judgment by any public agency for any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of this position?

() Yes — () No

1 If the answer is "Yes," complete the following:

2
3 Date of Suit: _____

4 Name of Public Agency: _____

5 Nature of Suit: _____

6
7 7. In what capacity will you be employed?

8
9 (e.g., Clerk, Loan Officer, Receptionist, etc.)

10
11 8. Do you expect to be a party to, or broker or salesperson in connection with,
12 loans conducted by the finance company that is employing you?

13
14 () Yes () No

15 If the answer is "Yes," explain:

16 _____
17 _____
18 _____

19
20 NOTE: Attach separate schedule if space is not adequate.

21
22 VERIFICATION

23
24 I, the undersigned, state that I am the person named in the foregoing Statement
25 of Identity and Employment Application; that I have read and signed said
26 Statement of Identity and Employment Application and know the contents
27 thereof, including all exhibits attached thereto, and that the statements made
28 therein, including any exhibits attached thereto, are true and correct.

29
30
31
32 Executed at _____

33 (City)

34 _____
35 (County) (State)

36
37 this _____ day of _____, 20____.

38
39 _____
40 (Signature of Prospective Employee)

1 ~~(b) A copy of the employment application shall be maintained~~
2 ~~as part of the licensee's books and records.~~

3 ~~(e) Any person required to file a statement of identity and~~
4 ~~questionnaire with an application as described in Section 22105~~
5 ~~is not required to complete the employment application set forth~~
6 ~~in this section.~~

7 ~~(d) Nothing in this section shall prevent a licensee from~~
8 ~~requesting additional information from an applicant.~~

9 ~~SEC. 4. Section 22169.2 is added to the Financial Code, to~~
10 ~~read:~~

11 ~~22169.2. A licensee shall report to the commissioner any new~~
12 ~~employee who answers affirmatively to question three, four, five,~~
13 ~~or six of the Statement of Identity and Employment Application~~
14 ~~in subdivision (a) of Section 22169.1 by submitting a copy of the~~
15 ~~employment application to the commissioner within 14 calendar~~
16 ~~days of the new employee's employment. Any person who knows~~
17 ~~of a violation of this section shall immediately report the violation~~
18 ~~in writing to the commissioner.~~

19 ~~SEC. 5. Section 50124 of the Financial Code is amended to~~
20 ~~read:~~

21 ~~50124. (a) A license application must be accompanied by an~~
22 ~~exhibit containing statements that the applicant agrees to do the~~
23 ~~following:~~

24 ~~(1) To maintain staff adequate to meet the requirements of this~~
25 ~~division, as prescribed by rule or order of the commissioner.~~

26 ~~(2) To keep and maintain for 36 months from the date of final~~
27 ~~entry the business records and other information required by law~~
28 ~~or rules of the commissioner regarding any mortgage loan made~~
29 ~~or serviced in the course of the conduct of its business.~~

30 ~~(3) To file with the commissioner any report required under law~~
31 ~~or by rule or order of the commissioner.~~

32 ~~(4) To disburse funds in accordance with its agreements and to~~
33 ~~make a good faith and reasonable effort to effect closing in a timely~~
34 ~~manner.~~

35 ~~(5) To account or deliver to a person any personal property such~~
36 ~~as money, funds, deposit, check, draft, mortgage, other document,~~
37 ~~or thing of value, that has come into its possession and is not its~~
38 ~~property, or that it is not in law or equity entitled to retain under~~
39 ~~the circumstances, at the time that has been agreed upon or is~~

1 required by law, or, in the absence of a fixed time, upon demand
2 of the person entitled to the accounting or delivery.

3 ~~(6) To file with the commissioner an amendment to its~~
4 ~~application prior to any material change in the information~~
5 ~~contained in the application for licensure, including, without~~
6 ~~limitation, the plan of operation. The commissioner shall, within~~
7 ~~20 business days of receiving a completed amendment to the~~
8 ~~application, or within a longer time if agreed to by the licensee,~~
9 ~~issue an order approving or disapproving the effectiveness of the~~
10 ~~proposed amendment.~~

11 ~~(7) To comply with the provisions of this division, and with any~~
12 ~~order or rule of the commissioner.~~

13 ~~(8) To submit to periodic examination by the commissioner as~~
14 ~~required by this division.~~

15 ~~(9) To advise the commissioner by amendment to its application~~
16 ~~of any material judgment filed against, or bankruptcy petition filed~~
17 ~~by, the licensee within five days of the filing.~~

18 ~~(10) To notify the commissioner, in writing, by certified mail,~~
19 ~~return receipt requested, prior to opening a branch office in this~~
20 ~~state, or changing or closing the business location or locations of~~
21 ~~the applicant or the branch offices of the applicant from which~~
22 ~~activities subject to this division are conducted.~~

23 ~~(b) The exhibit also shall contain a space for the applicant to~~
24 ~~attest that the applicant:~~

25 ~~(1) Has complied with all applicable state and federal tax return~~
26 ~~filing requirements for the past three years or has filed with the~~
27 ~~commissioner an accountant's or attorney's statement as to why~~
28 ~~no return was filed.~~

29 ~~(2) Has not committed a crime against the laws of any state or~~
30 ~~the United States, involving moral turpitude, misrepresentation,~~
31 ~~fraudulent or dishonest dealing, or fraud, and has disclosed to the~~
32 ~~commissioner any final judgment entered against it in a civil action~~
33 ~~upon grounds or allegations of fraud, misrepresentation, or deceit.~~

34 ~~(3) Has not engaged in conduct that would be cause for denial~~
35 ~~of a license.~~

36 ~~(4) Is not insolvent.~~

37 ~~(5) Has acted with due care and competence in performing any~~
38 ~~act for which it is required to hold a license under this division.~~

39 ~~(6) Any other matter as required by rule of the commissioner.~~

SEC. 6. Section 50306 of the Financial Code is amended to read:

50306. The commissioner may order a licensee that opens a branch office in this state or changes or closes its business location or its locations from which activities subject to this law are conducted, without first notifying the commissioner in writing, as required by Section 50124, to forfeit to the people of the state up to one hundred dollars (\$100) each day for the first 10 days and ten dollars (\$10) for each day thereafter during which the branch office or changed or closed business location is maintained without notifying the commissioner.

SEC. 7. Section 50318.1 is added to the Financial Code, to read:

50318.1. (a) Any person seeking employment with a residential mortgage lender or residential mortgage loan servicer shall complete an employment application on or before the first day of employment that includes, at a minimum, the following information:

STATEMENT OF IDENTITY
AND EMPLOYMENT APPLICATION
(Print or Type)

1. Exact Full Name:

First Name — Middle Name — Last Name
(Do not use initials or nicknames)

2. Title of position to be filled in connection with the preparation of this employment application:

3. Have you ever been disciplined for, or found guilty of, a violation of the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a rule or order of the Commissioner of Corporations pursuant to the California Residential Mortgage Lending Act?

() Yes — () No

If the answer is "Yes," complete the following:

1 Date of Violation: _____

2 Nature of Violation: _____

3
4 4. Have you ever been convicted of, or pleaded nolo contendere to, any crime
5 involving:

6
7 (1) Any offense specified in Chapter 18 (commencing with Section 3350)
8 of Division 1 of the Financial Code (Banking Law)?

9 (2) Any offense specified in Article 4 (commencing with Section 5300)
10 of Chapter 1 of Division 2 of the Financial Code (Savings Association
11 Law)?

12 (3) Any offense specified in Article 8 (commencing with Section 14750)
13 of Chapter 4 of Division 5 of the Financial Code (California Credit Union
14 Law)?

15 (4) Any offense specified in Chapter 7 (commencing with Section 17700)
16 of Division 6 of the Financial Code (Escrow Law)?

17 (5) Any offense specified in Chapter 6 (commencing with Section 18435)
18 of Division 7 of the Financial Code (Thrift and Loan Law)?

19 (6) Any offense specified in any provision of the law of the United States
20 added or amended by the federal Financial Institutions Reform, Recovery
21 and Enforcement Act of 1989 (Public Law 101-73)?

22 (7) Any offense involving robbery, burglary, theft, embezzlement, fraud,
23 fraudulent conversion or misappropriation of property, forgery,
24 bookmaking, receiving stolen property, counterfeiting, extortion, checks,
25 credit cards, or computer violations specified in Section 502 of the Penal
26 Code?

27 (8) Any other offense reasonably related to the qualifications, functions,
28 or duties of this position?

29
30 NOTE: A conviction is a plea or verdict of guilty or a conviction following a
31 plea of nolo contendere. A conviction also includes an order granting probation
32 and suspending the imposition of sentence, notwithstanding a subsequent order
33 pursuant to Section 1203.4 or 1203.4a of the Penal Code permitting the person
34 to withdraw his or her plea of guilty, or dismissing the accusation, information,
35 or indictment.

36
37 () Yes — () No

38 If the answer is "Yes," complete the following:

39
40 Date of Case: _____

1 Location of Court (City, County, State): _____

2 Nature of Case: _____

3
4 5. Have you ever been held liable in any civil court action involving:

5
6 (1) Any offense specified in Chapter 18 (commencing with Section 3350)
7 of Division 1 of the Financial Code (Banking Law)?

8 (2) Any offense specified in Article 4 (commencing with Section 5300)
9 of Chapter 1 of Division 2 of the Financial Code (Savings Association
10 Law)?

11 (3) Any offense specified in Article 8 (commencing with Section 14750)
12 of Chapter 4 of Division 5 of the Financial Code (California Credit Union
13 Law)?

14 (4) Any offense specified in Chapter 7 (commencing with Section 17700)
15 of Division 6 of the Financial Code (Escrow Law)?

16 (5) Any offense specified in Chapter 6 (commencing with Section 18435)
17 of Division 7 of the Financial Code (Thrift and Loan Law)?

18 (6) Any offense specified in any provision of the law of the United States
19 added or amended by the federal Financial Institutions Reform, Recovery
20 and Enforcement Act of 1989 (Public Law 101-73)?

21 (7) Any offense involving robbery, burglary, theft, embezzlement, fraud,
22 fraudulent conversion or misappropriation of property, forgery,
23 bookmaking, receiving stolen property, counterfeiting, extortion, checks,
24 credit cards, or computer violations specified in Section 502 of the Penal
25 Code?

26 (8) Any other offense reasonably related to the qualifications, functions,
27 or duties of this position?

28
29 () Yes — () No

30 If the answer is “Yes,” complete the following:

31
32 Date of Suit: _____

33 Location of Court (City, County, State): _____

34 Nature of Suit: _____

35
36 6. Have you ever been held liable in any administrative judgment by any
37 public agency involving:

38
39 (1) Any offense specified in Chapter 18 (commencing with Section 3350)
40 of Division 1 of the Financial Code (Banking Law)?

~~(2) Any offense specified in Article 4 (commencing with Section 5300) of Chapter 1 of Division 2 of the Financial Code (Savings Association Law)?~~

~~(3) Any offense specified in Article 8 (commencing with Section 14750) of Chapter 4 of Division 5 of the Financial Code (California Credit Union Law)?~~

~~(4) Any offense specified in Chapter 7 (commencing with Section 17700) of Division 6 of the Financial Code (Escrow Law)?~~

~~(5) Any offense specified in Chapter 6 (commencing with Section 18435) of Division 7 of the Financial Code (Thrift and Loan Law)?~~

~~(6) Any offense specified in any provision of the law of the United States added or amended by the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73)?~~

~~(7) Any offense involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code?~~

~~(8) Any other offense reasonably related to the qualifications, functions, or duties of this position?~~

() Yes — () No

If the answer is “Yes,” complete the following:

Date of Suit: _____

Name of Public Agency: _____

Nature of Suit: _____

7. In what capacity will you be employed?

(e.g., Clerk, Loan Officer, Receptionist, etc.)

8. Do you expect to be a party to, or broker or salesperson in connection with, loans conducted by the residential mortgage lending company or residential mortgage loan servicing company that is employing you?

() Yes — () No

If the answer is “Yes,” explain:

NOTE: Attach separate schedule if space is not adequate.

VERIFICATION

I, the undersigned, state that I am the person named in the foregoing Statement of Identity and Employment Application; that I have read and signed said Statement of Identity and Employment Application and know the contents thereof, including all exhibits attached thereto, and that the statements made therein, including any exhibits attached thereto, are true and correct.

Executed at _____
(City)

(County) (State)

this _____ day of _____, 20____.

(Signature of Prospective Employee)

(b) A copy of the employment application shall be maintained as part of the licensee's books and records.

(c) Any person required to file a statement of identity and questionnaire with an application as described in subdivision (d) of Section 50121 is not required to file the employment application set forth in this section.

(d) Nothing in this section shall prevent a licensee from requesting additional information from an applicant.

SEC. 8. Section 50318.2 is added to the Financial Code, to read:

50318.2. A licensee shall report to the commissioner any new employee who answers affirmatively to question three, four, five, or six of the Statement of Identity and Employment Application in subdivision (a) of Section 50318.1 by submitting a copy of the employment application to the commissioner within 14 calendar days of the new employee's employment. Any person who knows

1 of a violation of this section shall immediately report the violation
2 in writing to the commissioner.
3 SEC. 9. ~~No reimbursement is required by this act pursuant to~~
4 ~~Section 6 of Article XIII B of the California Constitution because~~
5 ~~the only costs that may be incurred by a local agency or school~~
6 ~~district will be incurred because this act creates a new crime or~~
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
8 ~~for a crime or infraction, within the meaning of Section 17556 of~~
9 ~~the Government Code, or changes the definition of a crime within~~
10 ~~the meaning of Section 6 of Article XIII B of the California~~
11 ~~Constitution.~~